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IN THE

Supreme Court of the United States

October Term, 1972

No. 73-19

IN THE MATTER OF THE APPLICATION OF

JULIUS P. CROWNE

For Admission to the Bar Examination of Florida

REPLY BRIEF IN BEHALF OF THE PETITIONER

JULIUS P. CROWNE,
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Corrections to the Brief Offered by the Respondent

1. The order of the Supreme Court of Florida denying rehearing is found at Appendix, Page 9A of this petition; it is the letter of the Board itself that may be found at Appendix, Page 10A of this petition by which it denied the renewed application of the Petitioner and not such order as set forth in the Brief of the Respondent.

2. The Respondent has attached to its brief Appendix D, Page 20 and refers to it as the petition to the Supreme Court of Florida. That petition is not part of the record thus far. What Respondent has attached is the *amended* petition.

Reasons Why the Brief of the Respondent Have No Merit

1. The whole purpose of the Petitioner is to sit for the Bar Examination in order to prove his legal scholarship. The Respondent's opposition is sought to be sup-

ported on the theory that the petitioner is seeking an *automatic license* to practice law.

2. The Respondent bases this support on *Brooks* v. *Laws,* 208 Fed. 2d 18 (incorrectly cited by it as 208 Fed. 18) in which a Petitioner was applying for admission to the Bar *without examination* and the Court say at page 18, last paragraph, "In papers filed in this proceeding by respondents it is shown that Brooks filed thirteen applications for admission to the Alabama bar and took the examination eight times but did not pass it; . . ." The Petitioner in that case was a graduate of La Salle University, a correspondence school, who was seeking admission on the basis of five years of the practice of law most of it in governmental service not requiring any license to practice law.

3. The Respondent takes the position that the difference in fees between residents and non-residents of the State of $110.00 and $400.00 for admission to the Bar Examination can be justified by a case (involving petitioners of varied interests) in which the difference between the fee for a noncommercial fishing license of $5.50 charged to a non-resident and $3.25 to a resident was involved. *American Commuters Association* v. *Levitt,* 279 F. Supp 40 at p. 48 (S. D. N. Y.). At the same time it presents the case of *Toomer et al.* v. *Witsell et al.,* 334 U. S. 385 which the Petitioner has offered in support of this writ, with a contrary inference. It appears to be making this argument in connection with the unfounded premise that the Petitioner has taken some stand regarding the differential with relation to "other out-of-state applicants". Page 2, Respondent's brief under Questions Presented for Review (Queston 3). The Court is concerned only with ***residents and non-residents*** of the State.

4. The Respondent offers no standard by which this Court can consider how to determine whether one's academic and legal scholarship sum up to the equivalent of that required of other candidates. "Other candidates" may well mean almost all of the candidates; and these "other" ones are those who have never been admitted to the practice of law in any State, while the Petitioner not only passed his Bar Examination 40 years ago but also practiced law over the years, after having been licensed to do so many years before many of them had arrived into the world. The academic proof has already been furnished and further proof of scholarship now rests with passing the Bar Examination.

5. The Petitioner has exhausted all remedies available to him below and obviously this Court can not be prevailed upon to impose upon him the performance of a futile act. The action of the Board dated May 31, 1973 denying his *renewed* application merely makes it an additional part of the record; the time to apply for a writ of certiorari to review the denial by the Florida Supreme Court of rehearing would not be extended by any further futile act. On the contrary to allow time to elapse in so applying would have made the petitioner vulnerable in reverse to the technical objection that his time to apply for this writ had already expired.

6. The contract which the Petitioner urges has been impaired is the right to seek to practice his chosen profession without unconstitutional hindrance as a citizen of the United States.

7. The original petition in the Court below was based upon an attack against the provisions of Article IV, Section 22 (a) and (b) of the Rules Relating to Admission to the Florida Bar since, as explained therein, the Peti-

tioner had ceased the general practice of law a generation previously and should not be obliged to resort to Section 22 (c) in order to qualify.

8. The amended petition in the Court below amplified the original petition in order to embrace the unconstitutionality of the arbitrary action of the Respondent, which was made under Section 22 (c).

9. The petition for rehearing was based upon an attack against the combined provisions of Article IV, Section 22 (a), (b) and (c) of those Rules.

10. The present Rules relating to admissions to the Bar were adopted following the enactment of L. 1955, c. 29796, sec. 1, 2, 7 FSA 454.021 and 454.022; and also, L. 1961, c. 61-530, sec. 10. Article V of the Constitution of the State of Florida, referred to at page 8, paragraph numbered 4 of the Respondent's brief, contains a section 23 (which it does not cite) which relates to the admission and discipline of attorneys and which was not adopted until November 6, *1956*. All of the dates involved are subsequent to the time of petitioner's graduation from law school in 1932 and admission to the Bar in 1933.

11. In Appendix F, at page 26 of the Respondent's brief it appears that a Rule 1 (e) of Rules Governing Florida Bar Examinations was promulgated in 1945. This Rule contained no provision whatever for including in the abstract of practice "samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, corporate charters or other working papers which the applicant considers illustrative of his expertise" as the present Rule Article IV, Section 22 (c) does. Rule 1 (e) of 1945, in its last sentence, further provided "The

applicant's experience as a practitioner may also be considered in this connection" (in evaluating academic and legal scholarship). The present rule upon which the Respondent has based its decision contains no such provision.

12. The position that the decision of the Respondent regarding Petitioner's practice was a substantive determination is untenable not only in view of its subjectiveness but also in view of its retroactiveness under its rules. In addition to the abstract of practice, supplemental abstract and documentary proof presented by the Petitioner to the Respondent there should have been given due consideration to the time lapse of 23 years and allowance made for it, or, in the alternative, at least a hearing on notice before any outright denial.

CONCLUSION

The petition for a writ of certiorari should be granted.

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